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Regulatory
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Fast Track Proposed Regulation Agency Background Document

Agency name	Board of Counseling, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC115-30-10 et seq.
Regulation title	Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling Assistants
Action title	Periodic review recommendations
Date this document prepared	3/24/09

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The Board has amended regulations for substance abuse counselors and assistants to update and clarify regulations that are not clearly understood or specific, to allow more flexibility in acquiring supervised experience required for certification, to specify the board-approved list of organizations that may offer educational opportunities and to require substance abuse counselors who supervise applicants to have more years of experience.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On February 6, 2009, the Board of Counseling amended 18VAC115-30-10 et seq., Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling Assistants by a fast-track action.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- ...*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...*

Specific regulatory authority for the powers and duties of the Board of Counseling is found in § 54.1-3505:

§ 54.1-3505. Specific powers and duties of the Board.

In addition to the powers granted in § [54.1-2400](#), the Board shall have the following specific powers and duties:

- 1. To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.*

2. *To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.*
3. *To designate specialties within the profession.*
4. *To administer the certification of rehabilitation providers pursuant to Article 2 (§ [54.1-3510](#) et seq.) of this chapter, including prescribing fees for application processing, examinations, certification and certification renewal.*
5. *Expired.*
6. *To promulgate regulations for the qualifications, education, and experience for licensure of marriage and family therapists. The requirements for clinical membership in the American Association for Marriage and Family Therapy (AAMFT), and the professional examination service's national marriage and family therapy examination may be considered by the Board in the promulgation of these regulations. The educational credit hour, clinical experience hour, and clinical supervision hour requirements for marriage and family therapists shall not be less than the educational credit hour, clinical experience hour, and clinical supervision hour requirements for professional counselors.*
7. *To promulgate, subject to the requirements of Article 1.1 (§ [54.1-3507](#) et seq.) of this chapter, regulations for the qualifications, education, and experience for licensure of licensed substance abuse treatment practitioners and certification of certified substance abuse counselors and certified substance abuse counseling assistants. The requirements for membership in NAADAC: the Association for Addiction Professionals and its national examination may be considered by the Board in the promulgation of these regulations. The Board also may provide for the consideration and use of the accreditation and examination services offered by the Substance Abuse Certification Alliance of Virginia. The educational credit hour, clinical experience hour, and clinical supervision hour requirements for licensed substance abuse treatment practitioners shall not be less than the educational credit hour, clinical experience hour, and clinical supervision hour requirements for licensed professional counselors. Such regulations also shall establish standards and protocols for the clinical supervision of certified substance abuse counselors and the supervision or direction of certified substance abuse counseling assistants, and reasonable access to the persons providing that supervision or direction in settings other than a licensed facility.*

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the proposed action is to clarify requirements so applicants and certificate holders are better able to comply with regulations. Other changes are intended to improve the competency of those are certified by the Board to counsel individuals with substance abuse problems. For example, more specificity about evidence of continued ability is necessary for an

applicant for reinstatement to be assured that the counselor or assistant is minimally competent and safe to return to practice. Changes in rules for supervision will ensure that the applicant receives supervision from an experienced practitioner throughout the period of supervision. These and other changes are intended to assist the Board in certifying practitioners who can safely and effectively counsel persons with substance abuse issues.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

The proposed action is the result of a periodic review of regulations for which there was no comment received and no substantive changes recommended. Since the amendments are primarily intended to add specificity to regulations that have been confusing, the Board does not expect there to be any controversy with the proposed action.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The following changes are proposed:

- 1) An "individualized program" has been deleted to allow a person to complete the 400 hours in seminars and workshops offered by the same providers that are approved for continuing education in regulations for licensed substance abuse treatment practitioners. The amendments will clarify the regulations and the means by which a person can obtain the required number of hours. They will also ensure some professional oversight of seminars and workshops used to complete educational requirements.
- 2) The requirement for experience as a certified substance abuse counselor has been changed from two years to four out of the past six years immediately preceding application for supervision to ensure that supervision is provided by a practitioner who has sufficient experience in substance abuse counseling.
- 3) The requirement for 100 hours supervision to be face-to-face has been replaced by "individual" supervision to allow more flexibility in obtaining supervision. Amendments also specify a minimum and maximum of hours per week, so there is some consistency in supervision throughout the supervised experience.
- 4) The requirement to provide evidence of current competency to practice in order to reinstate certification has been amended to specify that the evidence must consist of 20 hours of substance abuse education obtained through seminars and workshops or by coursework at an educational institution.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*
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- 1) The primary advantage to the public is the continued assurance that those who are board-certified are minimally competent to provide services. There are no disadvantages.
- 2) The primary advantage to the agency is clarification and specificity for several rules that have been confusing or ill-defined.
- 3) There are no other pertinent matters of interest.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected by the proposed regulation.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no alternative regulatory methods for accomplishing the intent of the proposed regulation.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal fees it charges to practitioners; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no on-going costs to the agency.
Projected cost of the regulation on localities	There are no costs to localities
Description of the individuals, businesses or other entities likely to be affected by the regulation	The individuals affected by these regulations are substance abuse counselors and substance abuse counseling assistants.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are 1597 certified substance abuse counselors and 61 certified substance abuse counseling assistants. It is unlikely that any of these entities would be small businesses.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	There would be no additional cost.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The changes proposed resulted from a periodic review with a comment period from September 1, 2008 to October 1, 2008. There were no comments received, so the Board reviewed the regulations in order to update language, make them more consistent with other regulations, and resolve questions about several requirements. There are no alternatives other than promulgation of amendments that can achieve the purpose of the action.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact on the family.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

Current section number	Current requirement	Proposed change and rationale
10	Establishes definitions for words and terms used in the regulations	Deletes a definition for a term (<i>appropriately credentialed authority</i>) that is no longer used. Adds a definition for NAADAC, the National Association of Alcoholism & Drug Abuse Counselors, which is referenced in regulation.
30	Establishes fees for application and certification	Deletes outdated language about a one-time fee reduction in 2007
40	Sets out the prerequisites for certification by examination for substance abuse counselors	Makes two grammatical changes.
45	Sets out the prerequisites for certification by endorsement for substance abuse counselors	Adds reference to certification by the National Association of Alcoholism & Drug Abuse Counselors (NAADAC), which is currently the only board-recognized national certification in substance abuse counseling. Adds specification about the standards that must be substantially equivalent by inserting "educational and experience." <i>Both changes are intended to make the prerequisites for certification more clearly understood to prospective applicants.</i>
50	Sets out the educational requirements for substance abuse counselors	1) In the requirement to complete 400 clock hours of substance abuse education from one of the following programs, the "integrated program acceptable to the Board" has been deleted because it was unclear what that meant. 2) Likewise, an "individualized program" has been deleted to allow a person to complete the 400 hours in seminars and workshops offered by the same providers that are approved for continuing education in regulations for licensed substance abuse treatment practitioners. <i>The amendments will clarify the regulations and the means by which a person can obtain the required number of hours. There is currently no process for</i>

		<p><i>board approval of workshops and seminars, so there is no assurance of quality and consistency. By specifying that the educational hours must be offered by or approved by a recognized professional organization or association, the Board has more confidence that the hours will be substantive in content.</i></p> <p>3) In subsection B, the Board has deleted “group dynamics and other adjunctive treatment and recovery support” as being unnecessary verbiage after “treatment approaches.”</p>
60	Sets out experience requirements for substance abuse counselors	<p>1) In subsection A, the Board eliminated the requirement to submit official transcripts documenting completion of a high school diploma or GED, as it is unnecessary to have such evidence presented for persons who already hold a license or certification issued by the Board.</p> <p>2) In subsection B, the Board eliminated the requirement for face-to-face supervision and replaced it with the term “individual” supervision. It also specified a minimum and maximum of hours per week, so there is some consistency in supervision throughout the supervised experience. The language is consistent with changes made for the three licensed professions in the past year.</p> <p>3) In subsection B #3, outdated language that “grandfathered” supervised experience obtained prior to January 19, 2000 (when regulations were previously amended) was eliminated.</p> <p>4) Subsection C was renamed to: a) specify the “qualifications” necessary for a supervisor; b) move the licensed substance abuse treatment practitioner to the first choice; and c) change the requirement for experience as a certified substance abuse counselor from two years to four out of the past six years immediately preceding application for supervision. <i>Substance abuse counselors have now been certified since 2001, so there are a sufficient number who have had at least four years of practice. Since substance abuse counselors do not have the same level of education and supervised experience required for licensure in the other professions allowed to provide supervision, the Board felt that additional practice experience was important for adequate supervision of persons training to become counselors.</i></p> <p>5) The responsibilities of a supervisor (currently listed under subsection C) are delineated in subsection D and #7 is eliminated since the Board no longer uses an outside contractor for approval of applications.</p>
61	Sets out prerequisites for certification by examination for substance abuse counseling assistants	Since the Board no longer uses an outside contractor for approval of applications, reference to the contracting agent are deleted.
62	Sets out educational requirements for substance abuse counseling assistants	The changes are identical to those made in Section 50 for substance abuse counselors.
90	Sets out general	Since the Board no longer uses an outside contractor for

	examination requirements	approval of applications, reference to the contracting agent are deleted.
120	Sets out requirements for reinstatement	Currently, regulations require someone seeking to reinstate certification to submit evidence regarding their continuing ability to perform the functions of the certification. The regulation lacks specificity, so neither the applicants nor the Board know what evidence they are expected to submit. The 20 hours of substance abuse education can be obtained through seminars and workshops or by coursework at an educational institution.
150	Sets grounds for revocation, etc.	Subsection B is unnecessary because disciplinary proceedings are governed by the Administrative Process Act.